

TRADE PRACTICES ACT 1974

UNDERTAKING GIVEN TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION FOR THE PURPOSES OF SECTION 87B

BY

**SIGNAL TELECOMMUNICATIONS PTY LTD
ACN 078 413 199**

Background

- (1) Signal Telecommunications Pty Ltd ACN 078 413 199 (Signal) is a wholesaler and reseller of telecommunications products and services of Vodafone Australasia Pty Ltd's network, 'Network Vodafone'. Based in Victoria, Signal operates as an authorised service provider in Victoria, New South Wales, South Australia, Western Australia and Queensland.
- (2) On 7 October 1998, Speakeasy Telecoms Pty Ltd ACN 081 814 959 (trading as Austalk (Qld)) (Austalk) appointed Moore Talk Communications Pty Ltd ACN 084 068 164, trading as MT Marketing (MT Marketing), as an authorised dealer of Austalk. Austalk was, at this time, a dealer of Nomad Services Pty Ltd ACN 076 673 875 (Nomad). Signal is a related company of Nomad.
- (3) On 1 September 1999, Austalk assigned its dealer agreement with MT Marketing to Nomad. Whether as a result of this appointment or otherwise MT Marketing acts as an authorised agent of Signal in the manner outlined in paragraph (4) below.
- (4) MT Marketing is based in Brisbane and (amongst other things) conducts telemarketing activities to promote the sale of mobile phone and access plan packages on a national basis. In the course of its business, telemarketing representatives of MT Marketing (MT representatives) telephone business and domestic consumers, promote Signal services and endeavour to obtain the signature of potential customers on Signal's Personal Application (the Application). If the Application is subsequently accepted by Signal, a contract for the provision of mobile telephone services is formed between the consumer and Vodafone Billing Services Pty Ltd ACN 076 885 713 on the terms and conditions appearing on the reverse side of the Application.
- (5) Between July 1999 and September 1999, MT representatives endeavouring to obtain the signature of potential customers on the Application observed a practice whereby they forwarded the Application to the potential customer by facsimile. While they faxed the front page of the Application to the customer, they failed to fax customers the reverse side of the Application containing the terms and conditions. During this period approximately 85 customers' Applications were accepted by Signal and such customers thereby entered into contracts with Vodafone Billing Services Pty Ltd for the provision of mobile telephone services (the Affected Consumers).

- (6) Following an investigation, the Australian Competition and Consumer Commission (the Commission) has reached the view that Signal, through the conduct of its agent MT Marketing, has contravened sections 52, 53(g), 51AB and 51AC of the *Trade Practices Act 1974* (the Act) by failing to provide potential customers with a copy of the relevant terms and conditions attaching to the Application before obtaining the signatures of potential customers.
- (7) In early November 1999, the Commission advised Signal that it was of the view that the conduct referred to in paragraph (5) above, if correct, contravened sections 52, 53(g), 51AB and 51AC of the Act.
- (8) Signal acknowledges that section 52 of the Act prohibits conduct that misleads or deceives, section 53(g) prohibits false representations concerning the existence, exclusion or effect of any condition, warranty, right or remedy, and sections 51AB and 51AC prohibit a corporation in trade or commerce in connection with the supply or acquisition of goods or services, from engaging in conduct that is unconscionable. Signal admits that the conduct of its agent, MT Marketing, has contravened sections 52, 53(g), 51AB and 51AC the Act. Signal has advised the Commission that the conduct referred to in paragraph (5) has ceased

Undertakings

- (9) This undertaking takes effect at the time the Commission's acceptance of it is communicated to Signal.
- (10) Signal undertakes for the purposes of section 87B of the Act:
 - (i) That it will:
 - (a) not by itself, its directors, servants, agents or howsoever fail to provide potential customers with a copy of the terms and conditions appearing on the reverse of the Application, in legible form, prior to obtaining the signature of a potential customer on the Application;
 - (b) within 30 days of this undertaking taking effect, forward a letter in the terms in the schedule in this undertaking, to the Affected Consumers, and shall enclose a copy of this undertaking;
 - (c) within 60 days of this undertaking taking effect, provide to the Commission evidence of completion of the action referred to in (10)(i)(b) above;
 - (d) not take any steps to enforce any contract with any Affected Consumer, who elects to rescind their contract.
 - (ii) Within two months of this undertaking first taking effect, Signal will conclude a review of all operating procedures and relevant information given to all of its dealers, whether appointed directly by Signal or

through third parties, at the commencement of the Dealer Agreement entered into by the dealer, to ensure that all customers are given a legible copy of all terms and conditions prior to signing the Application and are provided with correct and complete information relevant to the Application;

- (iii) Within one month of this undertaking taking effect, Signal will review the trade practices compliance program implemented as a result of the undertaking given to the Commission by Signal on 30 April 1999, to ensure that it fully takes account of Signal's obligations under the Act and addresses the conduct the subject of this Undertaking;
- (iv) Within 180 days of this undertaking taking effect, Signal shall cause, at its own expense, an independent audit of its trade practices compliance program to be conducted by a suitably qualified compliance professional who is entirely independent of Signal and has no conflict of interest or duty in providing audit services to it;

The auditor will review and report in writing on:

- (a) The particulars of the compliance program referred to in the undertaking given to the Commission by Signal on 30 April 1999, Signal's implementation of that compliance program and the achievement of its objectives;
 - (b) The completion of the review to be undertaken in accordance with paragraph 10(iii) of this Undertaking; and
 - (c) Any recommended changes to the compliance program that may be necessary to ensure achievement of its objectives.
- (v) Signal will require the auditor to provide a copy of the audit report to the Commission within one week of the completion of the report.
 - (vi) If requested by the Commission, Signal will provide to the Commission all relevant information showing whether any recommendations made by the auditor have been implemented.
 - (vii) Signal will, from the date of this undertaking, make all reasonable endeavours to ensure that all existing Signal dealers, whether appointed directly by Signal or through third parties, have undertaken the compliance program referred to in paragraph (10)(iii) above.
 - (viii) Within two months of this undertaking first taking effect, Signal will conclude its review of the Application and all ancillary documentation provided by its dealers to customers and potential customers to ensure that such documentation complies, at a minimum, with the Industry Code Customer Information on Prices, Terms and Conditions (the Code) prepared by the Australian Communications Industry Forum, within 60 days of the Code being finalised. Signal will continually


review and amend its Application and ancillary documentation within a reasonable time of it becoming aware of changes to the Code to ensure that it complies, at a minimum, with the Code as amended from time to time.

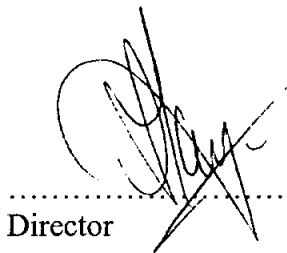
- (ix) Signal will join the Code as a signatory as soon as practicable once the final version is available for signing.

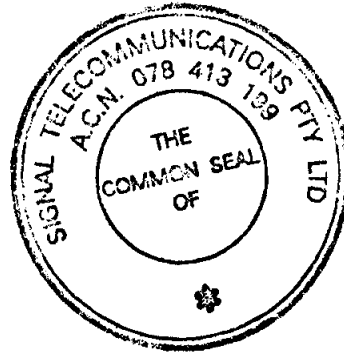
Acknowledgments

- (11) Signal acknowledges:
- (i) The Commission's right to make this undertaking available to the public including by placing it on a register, publishing it and allowing third parties to publish it;
 - (ii) That the Commission may issue a media release about this undertaking and may, from time to time, publicly refer to this undertaking; and
 - (iii) That this undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct referred to at paragraph (5) above.

IN WITNESS of these undertakings and its agreement the common seal of **SIGNAL TELECOMMUNICATIONS PTY LTD** ACN 078 413 199 was hereunto affixed by authority of the Board of Directors in the presence of:



.....
Secretary/Director


.....
Director



This *1st* day of *May* 2000

Accepted by the **AUSTRALIAN COMPETITION AND CONSUMER COMMISSION** pursuant to section 87B of the Trade Practices Act 1974.


.....
(Professor Allan Fels)
Chairman

This *1st* day of *May* 2000

Schedule

LETTERHEAD OF SIGNAL TELECOMMUNICATIONS PTY LTD

Dear Customer

RE: CONTRACT FOR MOBILE SERVICES WITH VODAFONE BILLING SERVICES PTY LTD

The purpose of this letter is to provide you with a copy of the terms and conditions attaching to your contract for mobile services and offer you the opportunity to cancel your contract for mobile services with Vodafone Billing Services Pty Ltd ('Vodafone') through Signal Telecommunications Pty Ltd ('Signal'), before the duration of the contract has expired, if you completed a Personal Application via facsimile as a result of an approach by Moore Talk Communications Pty Ltd (trading as MT Marketing), and were not provided, at that time, with a copy of the terms and conditions attaching to the Personal Application. A copy of those terms and conditions is enclosed with this letter.

MT Marketing is an authorised dealer of Signal and promotes Signal's mobile services. It has been brought to our attention by the Australian Competition and Consumer Commission ('ACCC'), that MT Marketing, in conducting telemarketing activities, failed to provide a number of customers with a copy of the terms and conditions attaching to the contract for mobile services with Vodafone, before signing. This is in breach of the Dealer Agreement which MT Marketing agreed to. Signal was not aware of this practice until it was brought to our attention by the ACCC.

Our discussions with the ACCC, and the actions we have undertaken to carry out as a result of them, are outlined in the enclosed Undertaking we have given to the ACCC. If we breach this Undertaking, the ACCC can take legal proceedings against us to enforce it.

The *Trade Practices Act 1974* ('the Act') prohibits corporations from making false representations, and from engaging in misleading and deceptive conduct or unconscionable conduct. A failure to provide a customer with a copy of the terms and conditions attaching to a contract to which they are about to enter, is considered to be conduct which is in all the circumstances, unconscionable, and results in the contract being unenforceable.

The purpose of the Act is to enhance the welfare of Australians through the promotion of competition and fair trading, and provision for consumer protection. Breaches of the Act are serious offences.

Signal wishes to comply with the Act and co-operate with the ACCC. As such, we have implemented a compliance program so that possible breaches of the Act can be avoided. Where businesses are engaged by Signal as dealers or agents, they are required to comply with the provisions of Signal's trade practices compliance program.

Signal has also given an undertaking that it will offer, to customers who completed a Personal Application via facsimile as a result of an approach by MT Marketing and were not, at that time, provided with a copy of the terms and conditions attached to the Personal Application, the opportunity of cancelling their contract with Vodafone. Customers who decide to cancel their contract will be required to return the SIM card provided with the mobile handset, but may keep the mobile handset which was provided to them.

However, you are under no obligation to cancel your contract. If, after reading the terms and conditions enclosed in this letter, you wish to continue your contract for mobile services, you may disregard this letter and your contract will continue. However, if you wish to cancel your current contract in light of the information provided above, please contact Signal on 1300 657 799.

Signal apologises for any inconvenience this may cause.

Yours sincerely

Director